

In the Matter of Merchant Mariner's Document No. Z-566995-D1
Issued to: J. B. OLIVER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

403

J. B. OLIVER

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 1 October, 1949, an Examiner of the United States Coast Guard at Port Arthur, Texas, suspended Merchant Mariner's Document No. Z-566995-D1 issued to J. B. Oliver upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as Assistant Electrician on the SS CAPE POSSESSION, under authority of the document above described, on or about 11 February, 1948, while said vessel was in a domestic port, he assaulted one Norman Griffith, a crew member, without reasonable cause, with a dangerous weapon - a pocket knife.

At the hearing, Appellant was represented by counsel of his own selection and entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer introduced testimony taken at a preliminary investigation convened 16 February, 1948, on board the CAPE POSSESSION which included the sworn statements of Griffith and Wm. L. Cook.

At this point, Appellant withdrew the "not guilty" plea and entered a plea of "guilty" but urges in mitigation that (1) Griffith was the aggressor in the encounter; (2) the encounter occurred on shore; and (3) all persons engaged in the controversy were under the influence of liquor.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and counsel for Appellant, the Examiner found the charge "proved" by plea and entered an order suspending Appellant's document for one year.

From that order, this appeal has been taken, and it is urged: (1) Appellant was ashore with permission from the Master; (2) Appellant did not attack Griffith but used the weapon in defense of his own person; (3) Appellant has never had trouble before this occasion; (4) because Appellant misunderstood a question at the hearing, he incorrectly answered it, and that may have influenced the Examiner's Order; (5) the suspension causes hardship to Appellant's mother; and (6) Appellant requests probation.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 11 February, 1948, Appellant was serving as Assistant Electrician on the SS CAPE POSSESSION, which vessel was then at Boca Grande, Florida. At about 10:00 A.M. on that day, Appellant went to a bar about a mile from the vessel's berth and began drinking beer. At sometime later, other crew members from the vessel came into the bar; and one Griffith, an Able Seaman, began annoying Appellant by remarking on his (Appellant's) ability as an electrician, and as a man. Griffith also was drinking. The conversation between the two men became more personal, and finally, Griffith advanced and laid his hands upon Appellant, ostensibly to pull him from the stool on which he was seated. At this time, Appellant produced a penknife (customarily used by electricians on shipboard) and stabbed at Griffith, inflicting a minor wound, 3/8 inch deep and 3 1/2 inches long. The knife was taken from Appellant by others nearby.

Appellant has an unblemished record for his service at sea; and has the commendation of his immediate superior

OPINION

While I recognize the right to use a weapon in self-defense where a genuine apprehension of personal harm is present, I do not find any circumstances present in this case to justify Appellant's use of the penknife. The situation originated in a mistaken idea of "fun," in which Appellant unhesitatingly participated; undoubtedly stimulated by his extended visit to the bar. Griffith's act of putting his hands on Appellant was not such that Appellant, in full possession of his faculties, would have considered an attack which warranted the use of a knife in self-defense.

Assuming the Master had consented to Appellant's absence from the vessel, I cannot see how that fact would mitigate the offense charged. The Examiner considered all the mitigating circumstances - except, perhaps the dependency of Appellant's mother, and his order was based upon such consideration.

It is quite unfortunate that innocent persons may suffer because of one's misconduct; but that is a factor which should be considered before, not after, an offense is committed.

No sound reason has been presented by this appeal which justifies my modification of the Examiner's order dated Port Arthur, Texas, on 1 October, 1949, and said Order is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of February, 1950.